SUPREME COURT, U. S.

FILED

JAN 6 1975

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-145

ADRON P. BRAINERD,

Petitioner,

vs.

WARREN W. BEAL and
ROBERT O. DUNN,

Respondents.

PETITION FOR REHEARING

RICHARD M. KATES
33 N. LaSalle Street
Chicago, Illinois 60602
Counsel for Petitioner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-145

ADRON P. BRAINERD,

Petitioner,

vs.

WARREN W. BEAL and
ROBERT O. DUNN,

Respondents.

PETITION FOR REHEARING

There is in this case the very important issue of redress for the clear negligence of the Clerk of the United States District Court. The actual docketing date of the final order is the sole issue in this case. The problem arose because that clerk's office failed to do a nondiscretionary duty under Rule 79(a) of the Federal Rules of Civil Procedure by not showing the date on which the docket entry was made which started the thirty day period for filing the notice of appeal. A copy

of the docket sheet is photocopied on page 1 of the Appendix of Brainerd's Petition for the Writ and shows that the column titled "date order or judgement noted" is blank. The failure of the clerk to do this nondiscretionary duty which caused the harm is clearly negligence.

The issue in this case was raised several months after the notice of appeal was filed. The district court clerk then tried to correct the problem in good faith, but the Court of Appeals prohibited him from doing so. When a ministerial employee in the federal judicial branch commits negligence, this Court should use its supervisory power to permit corrective action rather than refusing such relief and thus permitting such negligence by a federal court employee to deprive a litigant of all of his remedies and rights.

There is also possibly one mechanical matter. Brainerd respectfully hopes that his printers use of similarly colored covers (white and ivory) on his petition for certiorari and his reply did not inadvertently prevent consideration of both of his briefs.

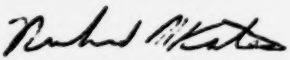
Respectfully submitted,

Richard M. Kates
33 N. LaSalle St.
Chicago, Ill. 60602

Counsel for Petitioner

CERTIFICATE

I, Richard M. Kates, counsel for petitioner, certify that this petition for rehearing is presented in good faith and not for delay.



Richard M. Kates